

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN ANTHONY HAAG,
Appellant,
vs.
WARDEN, ROBERT LEGRAND,
Respondent.

No. 60277

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant filed his petition on July 15, 2011,² more than seven years after entry of the judgment of conviction on November 20, 2003.³ Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, the petition was successive because appellant had previously filed a post-conviction petition for a writ of habeas corpus, and it

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²The district court's order provides the filing date as September 21, 2011, which is the date that appellant requested submission of the petition. The petition is untimely under either filing date.

³No direct appeal was taken.

constituted an abuse of the writ, as he raised claims new and different from those raised in his previous petition.⁴ See NRS 34.810(2). Thus, the petition was procedurally barred absent a demonstration of good cause and prejudice. NRS 34.726(1); NRS 34.810(3). Good cause can be demonstrated by a showing that an impediment external to the defense prevented the timely filing of the petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

In an apparent attempt to demonstrate good cause, appellant set forth several reasons why the procedural defects should be excused. First, he claimed that he did not understand the law and just recently learned about his claims from an inmate who reviewed his case. Appellant's lack of legal knowledge does not constitute good cause. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that a petitioner's limited intelligence and poor legal assistance from inmate law clerks did not establish good cause).

Second, appellant claimed that his post-conviction counsel failed to raise these claims in his first post-conviction petition. However, because appellant was not entitled to post-conviction counsel, ineffective assistance of post-conviction counsel does not constitute good cause to excuse the procedural bar. See McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Furthermore, appellant failed to raise this claim in a timely fashion, as he waited more than four years after the denial of his first post-conviction petition to file this petition.

⁴Haag v. State, Docket No. 47924 (Order of Affirmance, February 28, 2007).

Third, appellant claimed that he had to wait until the Ninth Circuit Court of Appeals ruled on his application for a certificate of appealability before he could file this petition. This argument is without merit, as his pending habeas proceedings in federal court did not prevent him from seeking relief in state court. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that seeking relief in federal court does not constitute good cause to excuse a delay). Appellant also claimed that his petition is timely under 28 U.S.C. § 2244(d)(1)(D). However, the federal statute does not control the limitations period for filing a post-conviction habeas petition in state court; rather, NRS 34.726 is the applicable statute as to the limitations period. To the extent that he claimed that he filed this petition within a reasonable time after learning about his claims, he failed to show that he could not have learned of the claims earlier.

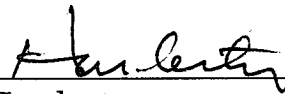
Finally, appellant claimed that he is actually innocent. To demonstrate actual innocence, appellant must show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Appellant failed to identify any new evidence showing his innocence. Further, his underlying claim, which alleged that the DNA evidence found in the victim’s bedroom could have originated from his wife, was raised in his first post-conviction petition and was rejected by this court. The doctrine of the law of the case prevents further litigation of this claim and cannot be avoided by a more detailed and focused argument. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

For the reasons discussed above, we conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Connie J. Steinheimer, District Judge
Steven Anthony Haag
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁵We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.